



DEPARTMENT OF COMMERCE

Docket No.: 121115633-2633-01

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

AGENCY: Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: This notice revises and updates the Department of Commerce (DOC) Pre-Award Notification Requirements for Grants and Cooperative Agreements, as published in the Federal Register (66 FR 49917) on October 1, 2001, and as amended on October 30, 2002 (67 FR 66109), on December 30, 2004 (69 FR 78389), and February 11, 2008 (73 FR 7696). This announcement constitutes a recompilation of the Department of Commerce pre-award requirements for grants and cooperative agreements, including all amendments and revisions to date.

DATES: These provisions are effective [**Insert Date of Publication in the Federal Register**].

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Department of Commerce Office of Acquisition Management, Telephone Number: 202-482-1679.

SUPPLEMENTARY INFORMATION: The DOC is authorized to award grants and cooperative agreements under a wide range of programs that support economic development; international trade; minority businesses; standards and technology; oceanic/atmospheric services; and telecommunications and information.

It is the policy of the DOC to seek full and open competition for awards of discretionary

financial assistance funds whenever possible. Moreover, DOC financial assistance must be awarded through a merit-based review and selection process. Notices announcing the availability of Federal funds for new awards for each DOC competitive financial assistance program will be posted on www.grants.gov by the sponsoring operating unit in the uniform format for an announcement of Federal Funding Opportunity (FFO) published by the Office of Management and Budget (OMB). In limited circumstances (e.g., when required by statute), DOC will also publish notices in the Federal Register announcing the availability of Federal funds for new awards. These announcements will reference or include the DOC Pre-Award Notification Requirements identified in Sections A and B of this notice, and the program-specific information identified in Section C of this notice, and will follow the uniform format for announcements of funding opportunities as identified in Section D.

This announcement provides notice of the DOC Pre-Award Notification Requirements that apply to all DOC-sponsored grant and cooperative agreement programs, and that may supplement those program announcements that reference this notice. Some of the DOC general provisions published herein contain, by reference or substance, a summary of the pertinent statutes or regulations published in the U.S. Code (U.S.C.), Federal Register, or Code of Federal Regulations (C.F.R.), or requirements provided in Executive Orders, OMB Circulars (circulars), or Assurances (Forms SF-424B and SF-424D). This notice does not intend to be a derogation of, or amend, any statute, regulation, Executive Order, circular, or Standard Form.

Each individual award notice will complete and include the relevant analyses pursuant to the requirements in Executive Order 12866, Executive Order 13132, the Administrative Procedure Act, the Regulatory Flexibility Act, and the Paperwork Reduction Act, as applicable.

A. The following pre-award notice provisions apply to all applicants for and recipients of DOC grants and cooperative agreements:

1. Federal Policies and Procedures. Applicants, recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance.

2. Debarment, Suspension, Drug-Free Workplace, and Lobbying Provisions. All applicants must comply with the requirements of subpart C of 2 C.F.R. part 1326, “Nonprocurement Debarment and Suspension,” 15 C.F.R. part 29, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)” and 15 C.F.R. part 28, “New Restrictions on Lobbying,” including the submission of required forms and obtaining certification from lower tier applicants and bidders.

3. Pre-Award Screening of Applicant’s and Recipient’s Management Capabilities, Financial Condition, and Present Responsibility. It is the policy of the DOC to make awards to applicants and recipients that are competently managed, responsible, financially capable and committed to achieving the objectives of the award(s) they receive. Therefore, pre-award screening may include, but is not limited to, the following reviews:

(a) Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(b) Credit Checks. A credit check will be performed on individuals, for-profit, and non-profit organizations.

(c) Delinquent Federal Debts. No award of Federal funds shall be made to an applicant

that has an outstanding delinquent Federal debt until:

- (1) The delinquent account is paid in full;
- (2) A negotiated repayment schedule is established and at least one payment is received;

or

- (3) Other arrangements satisfactory to the DOC are made.

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

Pursuant to 28 U.S.C. § 3201(e), a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The DOC sponsoring operating units may promulgate regulations to allow for waiver of this restriction on eligibility for such grants and cooperative agreements.

(d) List of Parties Excluded from Procurement and Nonprocurement Programs. The System for Award Management (SAM) (previously this information was located within the Excluded Parties Listing System), maintained by the General Services Administration (GSA), is available at <https://www.sam.gov>. SAM encompasses the capabilities of the Central Contractor Registration (CCR)/Federal Agency Registration (FedReg), Online Representations and Certifications Application (ORCA), and the Excluded Parties List System (EPLS), among other

federal databases, and will be checked by DOC to ensure that an applicant is properly registered and eligible to receive a DOC financial assistance award.

(e) Pre-Award Accounting System Surveys. The Grants Office may require a pre-award survey of the applicant's financial management system in cases where the recommended applicant has had no prior Federal support, the operating unit has reason to question whether the financial management system meets Federal financial management standards, or the applicant is being considered for a high-risk designation.

(f) Other. DOC may conduct additional pre-award screenings in accordance with new public laws or administrative directives.

4. No Obligation for Future Funding. If the DOC obligates funding for an applicant's project, the DOC has no obligation to provide any additional future funding in connection with that award. Any amendment of an award to increase funding or to extend the period of performance is at the total discretion of the DOC.

5. Pre-Award Activities. If an applicant incurs any costs prior to receiving an award, it does so solely at its own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made, or as authorized for awards that support research by 15 C.F.R. § 14.25(e)(4).

6. Freedom of Information Act (FOIA) Disclosure. The FOIA (5 U.S.C. § 552 and DOC regulations at 15 C.F.R. part 4) sets forth the process and procedure the DOC follows to make requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications, proposals, and other information

submitted by applicants may be released in response to FOIA requests. In accordance with 15 C.F.R. § 4.9, applicants and recipients should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submissions that it considers protected from disclosure under 5 U.S.C. §552(b)(4). In addition, Federal contractors may assist with program implementation and have access to materials applicants and recipients submit.

7. False Statements. A false statement on an application is grounds for denial or termination of an award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. § 1001.

8. Application Forms. Unless the individual programs specify differently in notices announcing the availability of funding, the following forms, family of forms, and/or certifications are required, as applicable, for DOC grants and cooperative agreements: OMB Standard Forms (SF) SF-424, Application for Federal Assistance; SF-424A, Budget Information - Non-Construction Programs; SF-424B, Assurances - Non-Construction Programs; SF-424C, Budget Information - Construction Programs; SF-424D, Assurances - Construction Programs; SF-424 Family of Forms for Research and Related Programs; SF-424 Short Organizational Family; SF-424 Individual Form Family; and SF-424 Mandatory Family. In addition, Commerce Department (CD) Forms CD-511, Certification Regarding Lobbying; CD-512, Certification Regarding Lobbying—Lower-Tier Covered Transactions; and SF-LLL, Disclosure of Lobbying Activities, will be used as appropriate.

9. Environmental Requirements. Environmental impacts must be considered by Federal decision makers in their decisions whether to (1) approve a proposal for Federal assistance; (2)

approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Applicants, recipients and subrecipients must comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the award may have on the environment. The failure to do so is a basis for not selecting an application. In some cases, if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

(a) The National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*). Applicants for and recipients of Federal financial assistance awards are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with the National Environmental Policy Act, when the award activities remain subject to Federal authority and control. Applicants for and recipients of assistance may be requested to assist DOC in drafting an environmental impact assessment or environmental impact statement as part of a proposal if DOC determines such documentation is required.

(b) National Historic Preservation Act (16 U.S.C. § 470 *et seq.*). Applicants for and recipients of Federal financial assistance awards are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Applicants and recipients may also be requested to assist

DOC in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties.

(c) Executive Order 11988 (“Floodplain Management”) and Executive Order 11990 (“Protection of Wetlands”). Applicants and recipients must identify proposed actions located in Federally defined floodplains and wetlands to enable DOC to make a determination whether there is an alternative to minimize any potential harm.

(d) Clean Air Act (42 U.S.C. § 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”). Applicants and recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), Clean Water Act (33 U.S.C. §§ 1251 et seq.), and Executive Order 11738. Recipients shall not use a facility that EPA has placed on the Environmental Protection Agency’s (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System which is incorporated into the SAM located at <https://www.sam.gov/portal/public/SAM>) in performing any award that is nonexempt under subpart J of 2 C.F.R. part 1532.

(e) The Flood Disaster Protection Act (42 U.S.C. § 4002 et seq.). Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

(f) The Endangered Species Act (16 U.S.C. § 1531 et seq.). Applicants and recipients must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility for ensuring that a protected species or habitat does not incur adverse effects from actions under Federal assistance awards, and for conducting the

required reviews under the Endangered Species Act, as applicable.

(g) The Coastal Zone Management Act (16 U.S.C. § 1451 et seq.). Funded projects must be consistent with a coastal state's approved management program for the coastal zone.

(h) The Coastal Barriers Resources Act (16 U.S.C. § 3501 et seq.). Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

(i) The Wild and Scenic Rivers Act (16 U.S.C. § 1271 et seq.). This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

(j) The Safe Drinking Water Act (42 U.S.C. § 300 et seq.). This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

(k) The Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.). This act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

(l) The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 et seq.). These requirements address responsibilities related to actual or threatened hazardous substance releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

(m) Executive Order 12898 ("Environmental Justice in Minority Populations and Low

Income Populations”). This Order identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

10. Limitation of Liability. In no event will the Department of Commerce be responsible for proposal preparation costs if a program fails to receive funding or is cancelled because of other agency priorities. The publication of an announcement of funding availability does not oblige the agency to award any specific project or to obligate any available funds.

B. The following general provisions will apply to all DOC grant and cooperative agreement awards:

1. Administrative Requirements and Cost Principles. The uniform administrative requirements for all DOC grants and cooperative agreements are codified at 15 C.F.R. part 14, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations,” and at 15 C.F.R. part 24, “Uniform Administrative Requirements for Grants and Agreements to State and Local Governments.” The following list of cost principles, which are incorporated by reference in 15 C.F.R. parts 14 and 24, are included in the DOC’s grants and cooperative agreements: 2 C.F.R. part 220 (OMB Circular A-21), “Cost Principles for Educational Institutions;” 2 C.F.R. part 225 (OMB Circular A-87), “Cost Principles for State, Local and Indian Tribal Governments;” 2 C.F.R. part 230 (OMB Circular A-122), “Cost Principles for Nonprofit Organizations;” Federal Acquisition Regulation subpart 31.2, “Contracts with Commercial Organizations,” codified at 48 C.F.R. § 31.2; and 45 C.F.R. part 74, “Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.” Applicable administrative

requirements and cost principles are identified in each award and are incorporated by reference into the award. Expenditures for any financial assistance award must be necessary to carry out the authorized project and be consistent with the applicable cost principles.

2. Award Payments. Advances will be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30-day period. Any advanced funds that are not disbursed in a timely manner and any applicable interest must be returned promptly to the DOC. Certain bureaus within the DOC use the Department of Treasury's Automated Standard Application for Payment (ASAP) system. In order to receive payments under ASAP, recipients will be required to enroll electronically in the ASAP system by providing their Federal Awarding Agency with pertinent information to begin the enrollment process, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. It is the recipient's responsibility to ensure that its contact information is correct. The funding agency must be provided a Point of Contact name, mailing address, e-mail address, telephone number, Data Universal Number System (DUNS) identifier issued by the commercial company Dun & Bradstreet (D&B), and taxpayer identification number (TIN) to commence the enrollment process. In order to be able to complete the enrollment process, the recipient will need to identify a Head of Organization, an Authorizing Official, and a Financial Officer. It is very important that the recipient's banking data be linked to the funding agency's Agency Location Code in order to ensure proper payment under an award. For additional information on this requirement, prospective applicants should contact their Federal Awarding Agency.

3. Federal and Non-Federal Cost Sharing.

(a) Awards that include Federal and non-Federal cost sharing will incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share will not exceed the total Federal dollar amount authorized by the award.

(b) The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, recipients must meet the cost share commitment over the life of the award.

4. Budget Changes and Transfers among Cost Categories. When the terms of an award allow the recipient to transfer funds among approved direct cost categories, the transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, the recipient will not be authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

5. Indirect Costs and Facilities and Administrative Costs.

(a) Indirect costs, or facilities and administrative (F&A) costs for educational institutions, will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

(b) Excess indirect costs may not be used to offset unallowable direct costs.

(c) OMB established the cognizant agency concept, under which a single agency represents all others in dealing with grantees in common areas. The cognizant agency reviews and approves grantees' indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the recipient would like to include indirect costs in its budget, but the recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate will be subject to the procedures in the applicable cost principles and the following subparagraphs:

(1)(i) State, local, and Indian Tribal Governments; Educational Institutions; Hospitals and Non-Profit Organizations (Non-Commercial Organizations).

For those organizations for which the DOC is cognizant or has oversight, the DOC or its designee will either negotiate a fixed rate with carry-forward provisions or, in some instances, limit its review to evaluating the procedures described in the recipient's cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

(ii) Commercial Organizations

For commercial organizations, the term "cognizant federal agency" generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. See 48 C.F.R. part 42. If the only federal funds received by a commercial organization are DOC award funds, then the DOC becomes the cognizant federal agency for the purpose of indirect cost negotiations. For those organizations for which the DOC is cognizant, DOC or its designee will negotiate a fixed rate with carry-forward provisions for the recipient. "Fixed rate" means an

indirect cost rate which has the same characteristics as a pre-determined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of the subsequent period. DOC or its designee will negotiate indirect cost rates using the cost principles found in 48 C.F.R. part 31, “Contract Cost Principles and Procedures.” For guidance on how to put an indirect cost plan together go to:

<http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm>.

(2) Within 90 days of the award date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Acquisition Management

U.S. Department of Commerce

14th Street and Constitution Avenue, N.W., Room 6412

Washington, DC 20230

(3) The recipient can use the fixed rate proposed in the indirect cost plan until such time as the DOC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating next year’s rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each recipient’s fiscal year.

(d) When the DOC is not the oversight or cognizant Federal agency, the recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

(e) If the recipient fails to submit the required documentation to the DOC within 90 days of the award date, the recipient may be precluded from recovering any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is good cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

(f) The maximum dollar amount of allocable indirect costs for which the DOC will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and applicable to the period in which the cost was occurred, provided the rate is approved on or before the award end date.

6. Tax Refunds. Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by a recipient during or after the project period must be refunded or credited to the DOC where the benefits were financed with Federal funds under the award. Recipients are required to contact the Grants Officer immediately upon receipt of these refunds. Recipients are required to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the project period ends.

7. Other Federal Awards with Similar Programmatic Activities. Recipients will be required to provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. The DOC will not pay for costs that are funded by other sources.

8. Non-Compliance with Award Provisions. Failure to comply with any or all of the provisions of an award, or the requirements of this notice, may have a negative impact on future funding by the DOC and may be considered grounds for any or all of the following enforcement actions: establishment of an account receivable, withholding payments under any DOC awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any DOC active awards, or termination of any DOC active awards.

9. Prohibition against Assignment by the Recipient. Notwithstanding any other provision of an award, recipients may not transfer, pledge, mortgage, or otherwise assign an award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

10. Non-Discrimination Requirements. There are several Federal statutes, regulations, Executive Orders, and policies relating to nondiscrimination. No person in the United States shall, on the grounds of race, color, national origin, handicap, religion, age, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any

program or activity receiving Federal financial assistance. These requirements include but are not limited to:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and the DOC's implementing regulations published at 15 C.F.R. part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) and the DOC's implementing regulations at 15 C.F.R. part 8a prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and the DOC's implementing regulations published at 15 C.F.R. part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance. The U.S. Department of Justice issued regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). These regulations adopt enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards). For purposes of complying with DOC's regulations, the 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). DOC deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects under 15 C.F.R. § 8b.18(c), as follows:

(1) Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alternations commence on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 35.151(c)(2));

(2) Private Recipients subject to Title III of the ADA may use either the 2010 Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 36.406(a)(2)); and

(3) In all cases, once a recipient selects an applicable ADA accessibility standard (i.e., the 2010 Standards or UFAS), that standard must be applied to the entire facility. As of March 15, 2012, all new construction and alteration projects must comply with the 2010 Standards.

(d) The Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 et seq.) and the DOC's implementing regulations published at 15 C.F.R. part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(e) The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

(f) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing;

(g) Parts II and III of Executive Order 11246, as amended by Executive Orders 11375 and 12086 requiring Federally assisted construction contracts to include the nondiscrimination provisions of sections 202 and 203 of that Executive Order and the Department of Labor's regulations at 41 C.F.R. § 60-1.4(b) implementing Executive Order 11246;

(h) Executive Order 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them, and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting LEP persons; and

(i) In recognition of the constitutionally-protected interest of religious organizations in making religiously-motivated employment decisions, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., which expressly exempts religious organizations from the prohibition against discrimination on the basis of religion. See 42 U.S.C. § 2000e-1(a).

11. Audits of Organizations Covered by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the related Compliance Supplement. Recipients that are subject to OMB Circular A-133, and that expend \$500,000 or more in Federal awards in a fiscal year shall have an audit conducted for that year in accordance with the

requirements of OMB Circular A-133, issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156).

12. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 C.F.R. § 14.26(c) and (d), for-profit hospitals, commercial entities, and other organizations not required to follow the audit provisions of OMB Circular A-133 shall have a program-specific audit performed by an independent auditor when the federal share amount awarded is \$500,000 or more over the duration of the project period. An audit is required at least once every two years using the following schedule for audit report submission.

(a) For awards where the project period is less than two years, an audit is required within 90 days of the end of the project period to cover the entire project (the award close-out period is included in the 90 days);

(b) For awards with a two- or three-year project period, an audit is required within 90 days after the end of the first year to cover Year 1, which is the period of time when Federal funding is available for obligation by the recipient, and within 90 days of the end of the project period to cover Year 2 and Year 3 (if applicable) (the award close-out period is included in the 90 days); or

(c) For awards with a four- to five-year project period, an audit is required within 90 days after the end of the first year to cover Year 1, within 90 days after the end of the third year to cover Year 2 and Year 3, and within 90 days of the end of the project period to cover Year 4 for and Year 5 (if applicable) (the award close-out period is included in the 90 days).

Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the

auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, subpart B, § ___.235. The Recipient may include a line item in the budget for the cost of the audit for approval by the Grants Officer.

13. Policies and Procedures for Resolution of Audit-Related Debts. The DOC has established policies and procedures for handling the resolution and reconsideration of financial assistance audits which have resulted in, or may result in, the establishment of a debt (account receivable) for financial assistance awards. These policies and procedures are contained in the Federal Register notice dated January 27, 1989. See 54 FR 4053. The policies and procedures also are provided in more detail in the Department of Commerce Financial Assistance Standard Terms and Conditions.

14. Debts. Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. The DOC's debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 15 C.F.R. § 19.1, delinquent debt is a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 15 C.F.R. § 19.5 and 31 U.S.C. § 3717, failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. DOC entities will transfer any DOC debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing," pursuant 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and 15 C.F.R. § 19.9, and may result in the DOC taking further action as specified in the

terms of the award. Funds for payment of a debt must not come from other federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

15. Post-Award Discovery of Adverse Information. After an award is made, if adverse information on a recipient or any key individual associated with a recipient is discovered which reflects significantly and adversely on the recipient's responsibility, the Grants Officer may take the following actions:

- (a) Require the recipient to correct the conditions.
- (b) Consider the recipient to be "high risk" and unilaterally impose special award conditions to protect the Federal Government's interest.
- (c) Suspend or terminate an active award. The recipient will be afforded due process while effecting such actions.
- (d) Require the removal of personnel from association with the management of and/or implementation of the project and require Grants Officer approval of personnel replacements.

16. Competition and Codes of Conduct.

- (a) Pursuant to the certification in Form SF-424B, paragraph 3, recipients must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest, or personal gain in the administration of this award and any subawards.
- (b) Recipients must maintain written standards of conduct governing the performance of their employees engaged in the award and administration of subawards. No employee, officer,

or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if such participation would cause a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient may not solicit or accept anything of monetary value from subrecipients. However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of a recipient.

(c) All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. Recipients must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals will be excluded from competing for such subawards.

(d) For purposes of the award, a financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with an applicant. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to act in an impartial manner. It also could result from non-financial gain to

the individual, such as benefit to reputation or prestige in a professional field.

17. Small Businesses, Minority Business Enterprises and Women's Business Enterprises.

The DOC encourages recipients to utilize small businesses, minority business enterprises and women's business enterprises in contracts under financial assistance awards. The DOC's Minority Business Development Agency can assist recipients in matching qualified minority business enterprises with contract opportunities.

18. Subaward and/or Contract to a Federal Agency. Recipients, subrecipients, contractors, and/or subcontractors may not sub-grant or sub-contract any part of an approved project to any Federal department, agency, instrumentality, or employee thereof, without the prior written approval of the Grants Officer.

19. Foreign Travel. Recipients must comply with the provisions of the Fly America Act (49 U.S.C. § 40118) and the implementing Federal Travel Regulations (41 C.F.R. §§ 301-10.131 through 301-10.143). The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag carrier service will not accomplish the agency's mission. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the recipient must receive prior approval from the Grants Officer.

20. Purchase of American-Made Equipment and Products. Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made

equipment and products with funding provided under DOC financial assistance awards.

21. Intellectual Property Rights.

(a) Inventions. The rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), as amended, and codified at 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 C.F.R. part 401 and in particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is incorporated by reference into awards. Recipients of DOC financial assistance awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Recipients may obtain a waiver of this electronic submission requirement by providing to the DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

(b) Patent Notification Procedures. Pursuant to Executive Order 12889, the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or its financial assistance recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient will be required to notify the Grants Officer. This notice does not necessarily mean that the government authorizes and consents to any copyright or patent infringement occurring under the financial assistance award.

(c) Data, Databases, and Software. The rights to any work produced or purchased under a DOC financial assistance award are determined by 15 C.F.R. §§ 14.36, for State and Local Governments, or 24.34, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations, as applicable. Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Federal Government purposes.

(d) Copyright. The recipient may copyright any work produced under a DOC financial assistance award subject to the DOC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work, or authorize others to do so for Federal Government purposes. Works jointly authored by the DOC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, the DOC may require the recipient to transfer to DOC its copyright in a particular work for government purposes or when the DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Federal Government through assignment is permitted by 17 U.S.C. § 105.

22. Seat Belt Use. Pursuant to Executive Order 13043, recipients shall seek to encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating recipient/company-owned, rented or personally owned vehicles.

23. Research Involving Human Subjects. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27, "Protection of Human

Subject.” No research involving human subjects is permitted under any DOC financial assistance award unless expressly authorized by the Grants Officer.

24. Federal Employee Expenses. Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the recipient’s provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee, may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants regardless of the source.

25. Minority Serving Institutions (MSIs) Initiative. Pursuant to Executive Orders 13555 (“White House Initiative on Educational Excellence for Hispanics”), 13270 (“Tribal Colleges and Universities”), and 13532 (“Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities”), the DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance award programs. The DOC’s goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation’s capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. The DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education’s website.

26. Access to Records. The DOC, the Inspector General of the DOC, the Comptroller General of the United States, or any of their duly authorized representatives, and, if appropriate,

the State, shall have access to any pertinent books, documents, papers and records of the parties to a grant or cooperative agreement, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. An audit of an award may be conducted at any time.

27. Research Misconduct. The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The DOC requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The

DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DOC's final determination.

28. Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763). Recipients must comply with this Act relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of the Office of Personnel Management Standards for a Merit System of Personnel Administration (5 C.F.R. part 900, subpart F).

29. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 et seq.) and the DOC's implementing regulations issued at 15 C.F.R. part 11. These provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

30. Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.). This Act prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

31. Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328). This Act limits the political activities of employees or officers of State or local governments whose principal employment activities are funded in whole or in part with Federal funds.

32. Labor standards for Federally-assisted construction subagreements (wage guarantees). Recipients must comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7); the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874); and

the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327 - 333).

33. Care and Use of Live Vertebrate Animals. Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. §§ 2131 et seq.) (animal acquisition, transport, care, handling, and use in projects) and implementing regulations, 9 C.F.R. parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. §§ 1531 et seq.); Marine Mammal Protection Act (16 U.S.C. §§ 1361 et seq.) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 et seq.) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

34. Publications, Videos, and Acknowledgment of Sponsorship. Publication of the results or findings in appropriate professional journals and production of videos or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (e.g., scientific research). The recipient may be required to submit a copy of any publication materials, including but not limited to print, recorded or Internet materials to the funding agency. When releasing information related to a funded project the recipient must include a statement that the project or effort undertaken was or is sponsored by DOC. The recipient is also responsible for assuring that every publication of material based on, developed under or otherwise produced under a

DOC award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer approved by the Grants Officer:

“This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.”

35. Homeland Security Presidential Directive – 12. If the performance of a grant award requires recipient organization personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award shall comply with the DOC personal identity verification procedures that implement Homeland Security Presidential Directive -12, “Policy for a Common Identification Standard for Federal Employees and Contractors,” FIPS PUB 201, and OMB Memorandum M-05-24. The recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient shall insert the following terms in all subawards and contracts when the subaward

recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

(a) The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

(b) The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) upon completion of the subrecipient or contractor employee's employment; (3) upon completion of the subaward or contract.

36. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.

(a) This clause applies to the extent that a financial assistance award involves access to export-controlled items.

(b) In performing a financial assistance award, the recipient may gain access to items subject to export controls (export-controlled items) under the Export Administration Regulations (EAR). The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexport provisions. The recipient shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls relating to physical, verbal, visual and electronic access to export-controlled items, including by foreign nationals.

(c) Definitions:

(1) Export-controlled items. Items (commodities, software or technology) that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with military and commercial application.

(2) Deemed Export/Reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.

(d) The recipient shall control access to all export-controlled items that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations, including the EAR.

(e) As applicable, recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.

(f) To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.

(g) Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, Executive Orders or regulations.

(h) Compliance with this term will not satisfy any legal obligations the recipient may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals.

(i) The recipient shall include this term, including this paragraph, in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

37. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175. The Trafficking Victims Protection Act of

2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or subrecipient engages in certain activities related to trafficking in persons. The DOC incorporates the award term required by 2 C.F.R. § 175.15(b) into all financial assistance awards. See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf> for the full award term.

38. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282; codified at 31 U.S.C. § 6101 note) (FFATA).

(a) The FFATA requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:

- (1) Name of entity receiving award;
- (2) Award amount;
- (3) Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
- (4) Location of: entity, primary location of performance (City/State/Congressional District/Country; and
- (5) Unique identifier of entity.

(b) Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined

in 2 C.F.R. part 170. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000. See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (see 31 U.S.C. 6101 note). The DOC incorporates the award term required by Appendix A of 2 C.F.R. part 170 into all financial assistance awards. See <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf> for the full award term.

(c) Central Contractor Registration (CCR) and Universal Identifier Requirements. Unless an exemption applies under 2 C.F.R. §25.110, applicants for federal financial assistance awards must be registered in the Central Contractor Registration (CCR) prior to submitting an application for financial assistance, maintain an active CCR registration with current information at all times during which it has an active Federal award or an application under consideration by an agency, and provide its DUNS number in each application it submits to the agency. For this purpose, the DOC incorporates the award term required by Appendix A of 2 C.F.R. part 25 into all financial assistance awards. See <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d1bbde1c530112e7133a03bb635bf2fe&rgn=div9&view=text&node=2:1.1.1.3.3.3.1.14.1&idno=2> for the full award term.

C. In limited circumstances (e.g., when required by statute), the DOC will issue a Federal Register notice, in addition to a notice on www.grants.gov, announcing the availability of Federal funds for each DOC competitive financial assistance program. Unless statute or regulation requires otherwise, such Federal Register notices will contain only the following

program-specific information: summary description of program; deadline date for receipt of applications; addresses for submission of applications; information contacts (including electronic access); the amount of funding available; statutory authority; the applicable Catalog of Federal Domestic Assistance (CFDA) number(s); eligibility requirements; cost-sharing or matching requirements; Intergovernmental Review requirements; evaluation criteria used by the merit reviewers; selection procedures, including funding priorities/selection factors/policy factors to be applied by the selecting official; and administrative and national policy requirements; and information about how to access the full program notice at www.grants.gov.

D. The DOC follows the uniform format for an announcement of Federal Funding Opportunity (FFO) for discretionary grants and cooperative agreements established by OMB in a guidance published in the Federal Register (see 68 FR 37370 (June 23, 2003) and 68 FR 58146 (October 8, 2003)). FFOs published by DOC are available at www.grants.gov. Applicants are strongly encouraged and in some cases required to apply through www.grants.gov. It can take up to two weeks to register with www.grants.gov if problems are encountered. Registration is required only once. Applicants should consider the time needed to register with www.grants.gov, and should begin the registration process well in advance of the application due date if they have never registered. Applicants should allow themselves adequate time to submit the proposal through www.grants.gov, as the deadline for submission generally cannot be extended and there is significant potential for human or computer error during the electronic submission process. After registering, it may take several days or longer from the initial log-on before a new Grants.gov system user can submit an application. Only authorized individual(s) will be able to submit the application, and the system may need time to process a submitted

proposal. Applicants should save and print the proof of submission they receive from Grants.gov, which may take up to two days to receive.

Executive Order 12866

This notice has been determined to be “not significant” for purposes of Executive Order 12866, “Regulatory Planning and Review.”

Administrative Procedure Act and Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This notice does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., unless that collection of information displays a currently valid OMB control number. The use of the following family of forms has been approved by OMB under the following control numbers: (1) SF-424 Family: 0348-0041, 0348-0044, 4040-0003, and 4040-0004; (2) SF-424 Research and Related Family: 4040-0001; SF-424 Individual Family: 4040-

0005; (3) SF-424 Mandatory Family: 4040-0002; and (4) SF-424 Short Organizational Family: 4040-0003. The use of Form SF-LLL is approved by OMB under the control numbers 0348-0046.

Catalog of Federal Domestic Assistance

This notice affects all of the grant and cooperative agreement programs funded by the DOC. The Catalog of Federal Domestic Assistance can be accessed on the Internet at:

<http://www.cfda.gov>.

List of Subjects

Accounting, Administrative practice and procedures, Grants administration, Grant programs-economic development, Grant programs-oceans, atmosphere and fisheries management, Grant programs-minority businesses, Grant programs-technology, Grant programs-telecommunications, Grant programs-international, Reporting and recordkeeping requirements.

Dated: December 4, 2012

Barry E. Berkowitz

Senior Procurement Executive and Director of Acquisition Management

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